

**SOLICITOR'S OPINION OF AUGUST 20, 1990**



BIA.PX.3210

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
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August 20, 1990

Memorandum

To: Area Director, Phoenix Area Office, BIA  
From: Field Solicitor, Phoenix  
Subject: Chemehuevi Request for Trust Patent

Since July of 1985, the Chemehuevi Tribe ("Tribe") has been requesting the Bureau of Indian Affairs ("BIA") to issue or authorize the issuance of a trust patent to the Tribe for the Tribe's reservation. The Tribe asserts, in essence, that absent such a document, the Tribe has no compensable interest in the reservation and can be evicted from the reservation at any time. Although neither assertion is correct, we believe the Secretary has the authority to issue the Tribe a trust patent.

I. Procedural History

In July of 1985, the Tribe sent a letter to the Realty Officer of the Colorado River Agency requesting a trust patent for the Chemehuevi Reservation. In its letter, the Tribe outlined the history of the Mission Indian Relief Act, the Secretary's withdrawal of the reservation from the public domain in aid of legislation in 1907 and a 1907 amendment to the Mission Indian Relief Act. (All of these acts and the withdrawal are discussed in part II., below.) The Agency sent the Tribe's letter to the Phoenix Area Office, and the Area Office responded to the Agency on August 21, 1985. The gist of the Area Office's response was that the reason no patent had been issued to the Chemehuevi Tribe pursuant to the Mission Indian Relief Act is because the Chemehuevi's are not Mission Indians. The response went on to note that regardless of the issuance of a patent, the Department, Congress and the courts have recognized the existence of the reservation and the Tribe's interest therein. The Superintendent of the Colorado River Agency sent a copy of the Area Office's response to the Tribe on September 24, 1985, and advised the Tribe its request for a trust patent was denied.

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On January 26, 1986, the Tribe requested the Superintendent to reconsider the decision denying the Tribe's request for a trust patent. In its request, the Tribe reiterated its earlier arguments and reemphasized that there was no document which recognized the Tribe's interest in the reservation. The Tribe argued that without such a document, there was no guarantee the reservation could not be terminated except by an Act of Congress. In other words it appears the Tribe is arguing that in the absence of some document evidencing title to the reservation in the Chemehuevi Tribe, the reservation can be administratively terminated. After the exchange of additional correspondence, the Tribe filed a notice of appeal from the Superintendent's September 24, 1985, letter on September 19, 1986. (25 C.F.R. Part 2 requires notices of appeal to be filed within 30 days of the action being appealed. Although this matter may be time barred, we will, nonetheless, address the merits of the Tribe's claim.)

Since the filing of the Tribe's appeal, this matter has been handled in a relatively informal manner since the issues involved are primarily a matter of researching the history of the Chemehuevi Reservation. Various documents have been exchanged between the Area Office, this office and the Tribe. We also requested the BIA's Central Office to look for documents related to this matter in the National Archives in Washington, D.C. A review of these documents leads us to conclude that while the Chemehuevis are not "Mission Indians", as noted by the Area Office in its 1985 decision, Congress considered them as such and they are covered by the Mission Indian Relief Act, as amended.

## II. Legal Analysis

On January 12, 1891, Congress passed An Act for the Relief of the Mission Indians in the State of California. 26 Stat. 712. (Hereinafter the Mission Indian Relief Act or "MIRA".) The MIRA created a Commission whose primary duty was to select a reservation for each band or village of Mission Indians residing in California. The selections were to include "as far as practicable, the lands and villages which have been in the actual occupation and possession of said Indians...." The Commissioners were to submit a report on each reservation selected to the Secretary of the Interior and the Secretary was directed, "if no valid objection exists", to issue a [trust] patent for each of the reservations selected by the Commission. The patents were to be held in trust by the United States for twenty-five years for the sole use and benefit of the band or village for whom the reservation was selected. During this time period the lands were subject to allotment to individual members of the band or village. At the end of the twenty-five years, the remaining lands were to be conveyed to the band or village in fee simple.

The Commission submitted its report to the Secretary of the Interior on December 7, 1891. The report was approved by the Secretary and the President of the United States on December 29, 1891. The report did not

contain a selection of a reservation for the Chemehuevi Indians living along the Colorado River. However, the report did contain a selection for the Indians living at 29 Palms, California. The Indians at 29 Palms are Chemehuevi Indians. Within a few years of the filing of the Commission report, the BIA became concerned that several tribes had not received all of the land in their "actual occupation and possession" on the date of passage of the MIRA. The Secretary of the Interior sent a letter to the Senate Committee on Indian Affairs outlining the BIA's concerns and requesting legislation amending the MIRA. Senate Document No. 54, 55th Congress, 2nd Session, January 11, 1898. (Copies of the documents referenced in this opinion are contained in the material accumulated from the National Archives, the Area Office, the Tribe and our files. All of this material is being returned to the Area Office with this opinion and should be filed in the Chemehuevi files.) Legislation was not enacted at that time, but the BIA continued to monitor the situation on behalf of the California Indians.

On January 3, 1907, C. E. Kelsey, Special Agent for the California Indians, in response to a letter sent by the Commissioner of Indian Affairs on November 10, 1906, filed a report on lands withdrawn for but not yet added to the Mission Indian Reservations. In his report, Agent Kelsey recommended that the lands listed in his report should be formally added to the various reservations by Congress. One of the parcels listed was land in the Chemehuevi Valley on the Colorado River below Needles, California. Agent Kelsey noted that the Chemehuevi Indians had lived in the area since primeval times and he did not know why the land had not previously been withdrawn for their benefit. Agent Kelsey recommended the land be added to the Colorado River Indian Reservation or that other appropriate action be taken.

The Commissioner of Indian Affairs, on January 31, 1907, sent a letter to the Secretary requesting that the lands listed in the Kelsey report be withdrawn from settlement and entry pending action by Congress authorizing their addition to the various reservations. The Secretary issued an order to the General Land Office ("GLO") to withdraw the listed lands from settlement and entry on February 2, 1907. In the order, the Secretary noted the Department had submitted proposed legislation to Congress on January 31, 1907, to add the lands to the various reservations. On March 1, 1907, Congress amended the MIRA to "authorize the Secretary of the Interior to select, set apart, and cause to be patented to the Mission Indians such tracts of the public lands of the United States, in the State of California, as he shall find upon investigation to have been in the occupation and possession of the several bands or villages of Mission Indians, and are now required and needed by them, and which were not selected for them by the Commission...." 34 Stat. 1022.

Shortly after passage of the legislation, the Department, in compliance with the legislation, "investigated" the status of the various parcels

withdrawn by the Secretary's February 2, 1907, Order. See for example, the Commissioner's letter of August 12, 1907, to the GLO. Although additional land was added to the Chemehuevi Reservation at 29 Palms, no further action was taken in regard to the land withdrawn for the Chemehuevis living in the Chemehuevi Valley. The Area Office in its August 21, 1985, decision concluded the reason no action was taken is because the Chemehuevis are not Mission Indians. Assuming this conclusion were correct, the Chemehuevis' status as non-Mission Indians would not, as explained below, affect the validity of the reservation. We conclude, however, that regardless of the Chemehuevis actual ethnic classification, the Department and the Congress considered them as Mission Indians for purposes of the 1907 amendment to the MIRA.

The Congressional Record for February 5, 1907, contains a copy of a letter sent from the Commissioner of Indian Affairs to the Chairman of the Committee on Indian Affairs, House of Representatives. The letter notes the Committee had acknowledged receipt of a letter from the Secretary of the Interior transmitting a letter from the Commissioner of Indian Affairs dated January 28, 1907. 41 C.R. 2268. The January 28, 1907, letter was located in the National Archives. The letter explained the need for an amendment to the MIRA and noted that appended to it were copies of C. E. Kelsey's reports and a proposed bill. As noted above, C. E. Kelsey's report of January 3, 1907, contained a specific recommendation for a reservation for the Chemehuevis in the Chemehuevi Valley. In addition, the January 3, 1907, report contained eight maps showing the proposed additions to the California reservations. One of these maps depicts the Chemehuevi Valley. Thus, it is clear Congress had copies of Kelsey's reports and was aware the Chemehuevis at Chemehuevi Valley (not to mention the Chemehuevis at 29 Palms) were considered by the Department as being one of the intended beneficiaries of the proposed legislation. Congress apparently did not object to the Department's proposal since the legislation, as enacted, is verbatim to that proposed by the Department.

We have been unable to find any documents explaining why the Chemehuevi Reservation was not patented, as other reservations on Kelsey's list were, shortly after passage of the 1907 amendment. We see no present legal impediment to issuing such a patent. On the other hand, we see no real need for the issuance of such a patent either. The Tribe claims it must have some document evidencing title in order to have a compensable interest, and permanent occupancy rights, in the reservation. Most Indian reservations have no title documents. The only evidence of title is an order creating or withdrawing land for the reservation and a notation in the GLO (now Bureau of Land Management) or BIA records.

The land in question was withdrawn by the Secretary in aid of legislation. The legislation was passed giving the Secretary the authority to permanently withdraw the lands and "convey" twenty-five years in the future, a patent. At this point, it must be remembered the legislation

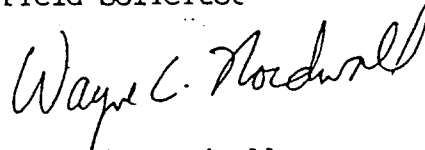
authorized the issuance of a trust patent. A trust patent is not a present conveyance of title, it is merely a promise to convey at some point in the future. In addition, the legislation specifically intended that the reservation would be allotted and only the remaining lands, if any, conveyed to the tribes. Indian law and policy has changed radically since 1907.

First, in 1927 Congress prohibited the alteration of any Indian reservation created by "Executive order, proclamation or otherwise" except by Act of Congress. 25 U.S.C. 398d. In a November 19, 1963, letter from the Chief of the Branch of Real Property Management to the Commissioner of Indian Affairs, the Branch Chief advised the Commissioner that "remedial or clarifying" legislation was not needed as the Chemehuevi Indians already have a compensable interest in the reservation as a result of the passage of 25 U.S.C. 398d. (The Chemehuevis have, in fact, been compensated for takings of tribal land.) Next, as noted above, the purpose of the trust patent was to divide the land and allot it to individual members of the band or village. Then, at the end of the trust period, the remaining lands, if any, were to be conveyed in fee simple to the band or village. The allotment policy was repudiated by Congress in Section 1 of the Indian Reorganization Act (IRA). 25 U.S.C. 461. In addition, Section 2 of the IRA extended indefinitely all periods of trust--thus, no fee patents have been issued. 25 U.S.C. 462. Finally, section 16 of the IRA recognized that tribes are the actual owners of their land and that they clearly have a compensable interest in their lands. 25 U.S.C. 476. Thus, the original purpose of the MIRA has been changed by history and subsequent legislation and issuance of a trust patent at this time will serve no real purpose.

Assuming your office decides to grant the Tribe's request some technical problems exist. First, no one has issued a trust patent for tribal lands for almost a century. Thus, there are no forms or standardized procedures for the issuance of such a patent. Any patent, obviously, must conform with the requirements of the authorizing statute. Attached is a copy of the trust patent issued to the Agua Caliente Tribe (Palm Springs). The patent was drafted in conformance with the 1907 amendment. Also attached is a draft patent prepared by the Tribe's attorney. I suggest that you use these as models or perhaps get some additional samples from the Archives. The final issue in this matter is who has the authority to cause the patent to be issued. The 1907 amendment provides that the Secretary may "cause to be patented" the lands selected for the various bands and villages. The Secretary apparently did this in the case of the Agua Caliente Tribe by issuing an order to the GLO to issue the patent. Since that time, the Secretary has delegated his authority to request the issuance of patents to the Assistant Secretary--Indian Affairs. 209 D.M. 8. The Assistant Secretary has, in turn, redelegated his authority to the Area Directors at 230 D.M. 3. It, therefore, appears your office has the authority to

request the BLM. The successor to the GLO--to issue a trust patent to the Chemehuevi Tribe. (Note--any request to the BLM must be sent to the BLM's California State Office as the land in question is in California.)

Fritz L. Goreham  
Field Solicitor

A handwritten signature in cursive script, reading "Wayne C. Nordwall". The signature is written in dark ink and is positioned above the typed name.

Wayne C. Nordwall  
For the Field Solicitor

Attachments